



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

(petitioner)

DECISION

MRA-59/52449

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 15, 2002, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Sheboygan County Dept. of Human Services in regard to Medical Assistance (MA), a hearing was held on March 15, 2002, at Sheboygan, Wisconsin.

The issue for determination is whether a community spouse income allocation may be increased due to financial duress.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

(petitioner)

Represented by:

Attorney Robert H. Halvorsen  
2115 South Taylor Drive  
Sheboygan, WI 53081-8419

Department of Health and Family Services  
Division of Health Care Financing  
1 West Wilson Street, Room 250  
P.O. Box 309  
Madison, WI 53707-0309

By: Timothy Gessler, ES Supervisor, ESS  
Sheboygan County Dept Of Human Services  
3620 Wilgus Ave  
Sheboygan, WI 53081

**ADMINISTRATIVE LAW JUDGE:**

Peter D. Kafkas  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Sheboygan County.
1. Petitioner is a recipient of institutional MA. His wife resides in the community.
2. Petitioner's monthly income is \$1,959.11 from social security, VA Disability and a pension. His wife has Social Security income in the amount of \$498.
3. Petitioner's wife lists monthly expenses totaling \$2,277. See the Exhibit 1.
4. Petitioner's wife's major listed expenses, with the monthly amounts, are home payments of \$190, property taxes of \$15.44, phone, \$60, natural gas, \$75, electric, \$61.17, doctors and medications, \$ 630.82, automobile gas, insurance and payments, \$ 655.82, homeowners insurance, \$25, wife's life insurance, \$49.16, water, \$62, food and entertainment, \$436.08, miscellaneous items such as newspapers, \$14, home repairs, \$25, and various installment payments for debt and attorneys, \$248 (divorce is pending). See, Exhibit 1, pages 1 and 2.

### **DISCUSSION**

Wis. Stat. § 49.455, is the Wisconsin codification of 42 U.S.C. s.13964-5 (MCCA). The "spousal impoverishment" provisions at § 49.455 require the Department to establish an income allowance for the community spouse of an institutionalized person. That standard allowance is currently set, for purposes of this discussion, at \$1,935. See, MA Handbook, App. 23.6.0 (shelter factors have been considered in this calculation). The institutionalized person may divert some of his income to his community spouse rather than contributing to his cost of care. The amount of the diverted income, when combined with the spouse's income, cannot exceed the maximum allocation.

An exception allows for a hearing officer to increase the maximum allocation. The hearing officer does not have total discretion in creating an exception to the maximum allocation. Wis. Stat. § 49.455(8)(c) provides:

- (c) If either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance determined under sub. (4)(c), the department shall determine an amount adequate to provide for the community spouse's needs and use that amount in place of the minimum monthly maintenance needs allowance in determining the community spouse monthly income allowance under sub. (4)(b).

(Emphasis added). In summation, a hearing officer may supplement the maximum allocation by amounts needed to alleviate financial duress. The maximum allocation may be increased to allow the community spouse to meet necessary and basic maintenance needs.

A few of petitioner's expenses seem a little high; i.e., installment payments, automobile expenses, and medical expenses. But the expenses were broken down by petitioner with sufficient detail to support the amounts. Also, petitioner is going through a divorce, which has increased her monthly installment payments; i.e., she pays her attorney monthly. Petitioner did not list some expenses such as clothing. Overall, petitioner's wife's expenses seem reasonable.

Based on the itemized expenses of petitioner, which the county agency did not dispute, the maximum monthly income allowance will increase from \$1,935 to \$2,277. The county agency shall be ordered to re-determine petitioner's husband's patient liability under the institutional MA program.

## **CONCLUSIONS OF LAW**

The expenses of petitioner's wife warrant an increase in her income allotment.

**NOW, THEREFORE, it is**

**ORDERED**

That the matter be remanded to the county with instructions to recalculate petitioner's cost of care, retroactive through the period set forth in the negative January 30, 2002, notice, taking into account an increased community spouse maximum monthly income allowance of \$2,277 per month. This shall be done within ten (10) days of the date of this decision. In all other respects, the hearing request is dismissed.

## **REQUEST FOR A NEW HEARING**

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The

process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of  
Milwaukee, Wisconsin, this 30th day of  
May, 2002

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/sPeter D. Kafkas  
Administrative Law Judge  
Division of Hearings and Appeals  
71/PDK